

ORIGINAL

FILED

07 JUL 18 AM 10:57

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

1 MARK I. LABATON (CA Bar No. 159555)
 2 **KREINDLER & KREINDLER LLP**
 3 707 Wilshire Boulevard, Suite 4100
 4 Los Angeles, CA 90017
 5 Telephone: (213) 622-6469
 6 Facsimile: (213) 622-6019
 7 mlabaton@kreindler.com

8 HILARY B. TAYLOR (CA Bar No. 203796)
 9 **KREINDLER & KREINDLER LLP**
 10 100 Park Avenue
 11 New York, NY 10017
 12 Telephone: (212) 687-8181
 13 Facsimile: (212) 972-9432
 14 htaylor@kreindler.com

15 GEORGE A. SHOHET (CA Bar No. 112697)
 16 **LAW OFFICES OF GEORGE SHOHET**
 17 245 Main Street, Suite 310
 18 Venice, CA 90291
 19 Telephone: (310) 452-3176
 20 Facsimile: (310) 452-2270
 21 gshohet@aol.com

22 Attorneys for Relator

23 UNITED STATES DISTRICT COURT
 24 SOUTHERN DISTRICT OF CALIFORNIA

'07 CV 1292

LAB (CAB)

25 UNITED STATES OF AMERICA ex
 26 rel. [Under Seal],

27 Plaintiff,

28 v.

[Under Seal],

Defendants.

Civil Case Number:

COMPLAINT FOR VIOLATION OF
FEDERAL FALSE CLAIMS ACT

JURY TRIAL DEMANDED

**FILED UNDER SEAL
PURSUANT TO THE FALSE
CLAIMS ACT [31 U.S.C. § 3729 et
seq.]**

1 MARK I. LABATON (CA Bar No. 159555)
2 **KREINDLER & KREINDLER LLP**
3 707 Wilshire Boulevard, Suite 4100
4 Los Angeles, CA 90017
5 Telephone: (213) 622-6469
6 Facsimile: (213) 622-6019
7 mlabaton@kreindler.com

8 HILARY B. TAYLOR (CA Bar No. 203796)
9 **KREINDLER & KREINDLER LLP**
10 100 Park Avenue
11 New York, NY 10017
12 Telephone: (212) 687-8181
13 Facsimile: (212) 972-9432
14 htaylor@kreindler.com

15 GEORGE A. SHOHET (CA Bar No. 112697)
16 **LAW OFFICES OF GEORGE SHOHET**
17 245 Main Street, Suite 310
18 Venice, CA 90291
19 Telephone: (310) 452-3176
20 Facsimile: (310) 452-2270
21 gshohet@aol.com

22 Attorneys for Relator

23 UNITED STATES DISTRICT COURT
24 SOUTHERN DISTRICT OF CALIFORNIA

25 UNITED STATES OF AMERICA, ex
26 rel. ANNA WELLS,

27 Plaintiff,

28 v.

CR ASSOCIATES, INC., and DOES 1-
500, inclusive,

Defendants.

Civil Case Number:

COMPLAINT FOR VIOLATION OF
FEDERAL FALSE CLAIMS ACT

JURY TRIAL DEMANDED

**FILED UNDER SEAL
PURSUANT TO THE FALSE
CLAIMS ACT [31 U.S.C. § 3729 et
seq.]**

1 Relator/plaintiff, Anna Wells, alleges as follows:

2 **SUMMARY OF THE ACTION**

3 1. Ms. Wells brings this action on behalf of the United States of
4 America to recover damages, civil penalties, and other relief arising from false
5 claims and false statements made in violation of the Federal False Claims Act
6 ("FCA").

7 2. Defendant CR Associates ("CRA") is a private, for-profit company
8 that operates healthcare clinics throughout the United States providing services to
9 the Department of Veterans Affairs ("the VA").

10 3. This action arises from false claims and false statements made to the
11 VA by CRA's health clinic located in Escondido, California.

12 **THE PARTIES**

13 4. Ms. Wells has worked as a registered nurse since 1997. She holds a
14 Bachelor of Science in Nursing from San Diego State University. Early in 2007,
15 she worked at the VA Clinic in Escondido, California operated by CRA.

16 5. Defendant CRA is a Delaware corporation with a principal place of
17 business in Virginia. CRA runs outpatient clinics for the VA throughout the
18 country, including clinics in San Diego, California.

19 6. Relator is unaware of the true names and capacities of the defendants
20 sued as Does 1-500 inclusive.

21 **JURISDICTION AND VENUE**

22 7. This Court has subject matter jurisdiction pursuant to 31 U.S.C. §
23 1331 and 31 U.S.C. § 3732, which confer jurisdiction on this Court for actions
24 brought under 31 U.S.C. §§ 3729 and 3730.

25 8. This Court has jurisdiction over the defendants pursuant to 31 U.S.C.
26 § 3732(a), which authorizes nation-wide service of process. Moreover, defendants
27 transact business in this district.

1 9. Venue is proper in this district pursuant to 31 U.S.C. § 3732(a)
2 because the Defendants can be found in, reside in, and/or transact business in the
3 Southern District of California.

4 **SUBSTANTIVE ALLEGATIONS**

5 **A. CRA's Contract With The VA**

6 10. In 2006, CRA submitted a proposal to operate the VA Clinic in
7 Escondido, California. In the proposal, CRA agreed, among other things, to: bill
8 the VA only for authorized work and at rates permitted by the VA; provide quality
9 health care; employ a staff certified to perform the services required; and follow
10 mandated health and infection policies.

11 11. On or about October 31, 2006, the VA accepted CRA's proposal and
12 retained CRA "to provide Primary Care services to veterans of the VA San Diego
13 Healthcare System."

14 12. On or about February 26, 2007, Ms. Wells started working at the VA
15 Clinic in Escondido run by CRA. Clinic director, Steven Jackson, hired her as a
16 nurse manager to supervise the nursing staff, assist in the day-to-day management
17 of the clinic and help ensure it complied with VA requirements.

18 **B. False Charging The VA**

19 13. The VA reimbursed the clinic for certain visits that included
20 "treatment" and "diagnosis" of patients. These were referred as "vesting" visits,
21 and the clinic could collect \$420 for such patient visits. CRA had no right to seek
22 reimbursement for other visits to the clinic that did not involve "treatment" and
23 "diagnosis" of patients. Such visits were known as "non-vesting visits." These
24 "non-vesting visits" — including patients coming in merely to have prescriptions
25 filled — constituted the bulk patient visits to the clinic.

26 14. At Mr. Jackson's direction, the clinic classified virtually all visits to
27 as "vesting" ones even though the majority were clearly "non-vesting" visits that
28

1 required no “treatment” or “diagnosis.” The clinic also knowingly submitted false
 2 claims and statements to the VA to fraudulently procure VA funds for clinic visits
 3 that it had no right to receive.

4 15. Based on information and belief, other VA clinics operated by
 5 CRAssociates also engage in the same fraudulent billing practices, including
 6 charging the VA for non-vesting visits. In so doing, they also have made false
 7 claims and statements to the United States.

8 **C. Healthcare, Training and Privacy Issues**

9 16. Besides submitting false claims to the VA for clinic visits for which
 10 the clinic had no right to seek reimbursement, the clinic failed to:

- 11 ● implement policies and procedures for infection control and sterilization
 12 of equipment. For example, one machine used to sterilize equipment had not been
 13 cleaned for years, and the clinic did not monitor the sterilization of other
 14 equipment;
- 15 ● maintain defibrillator training or log books;
- 16 ● advise patients of their rights and provide them with forms confirming
 17 they were informed;
- 18 ● ensure that only qualified medical personnel fill prescriptions;
- 19 ● maintain nursing policy and procedure manuals;
- 20 ● perform background checks on employees before they were hired and
 21 ensure that only such employees receive computer passwords and access to
 22 patient medical records;
- 23 ● ensure that medical assistants pass a medication administration test
 24 required by both the Joint Commission of Accrediting Health Organizations and
 25 the clinic’s contract with the VA; and
- 26 ● maintain complete medical records and charts and electronic medical
 27 records as required by the VA.

D. Unlawful Retaliation and Termination

17. On or about March 5, 2007, Ms. Wells wrote a memorandum to Mr. Jackson in which she explained her concerns regarding the safety and welling of the clinic's patients and its failure to comply with its VA contract.

18. Later that day, Ms. Wells received a call from the human resources administrator at the clinic informing her that she was placed on paid administrative leave. At that time, the clinic's human resources administrator told Ms. Wells this was being done for Ms. Well's benefit so that she did not have to work in an environment that she felt presented a danger to patients.

19. While on administrative leave, Ms. Wells met at CRA's request with CRA company representatives Kathleen Orlinsky and Lynne Stockebrand. The meeting took place at a local hotel. Prior to the meeting, Ms. Wells said she wanted to discuss how the clinic's safety and healthcare compliance problems could be fixed. She was assured that this would be addressed. Instead, the two company representatives appeared to have only one interest: they wanted to know if Ms. Wells took any documents from the clinic before being placed on leave.

20. On March 27, 2007, the clinic terminated Ms. Wells' employment.

COUNT ONE

(False Claims Act, 31. U.S.C. § 3729(a)(1))

(Against All Defendants)

21. Ms. Wells realleges and incorporates by reference all paragraphs set forth herein.

22. By virtue of the acts described above, defendants knowingly or acting in deliberate ignorance or reckless disregard presented or caused to be presented to the United States false or fraudulent claims for payment or approval in violation of the FCA.

23. Because of these acts, the United States has suffered damages.

COUNT TWO

(False Claims Act, 31. U.S.C. § 3729(a)(2))

(Against All Defendants)

24. Ms. Wells realleges and incorporates by reference all paragraphs set forth herein.

25. By virtue of the acts described above, defendants knowingly or acting in deliberate ignorance or reckless disregard made, used, or caused to be made or used, falses record or statements to get a false or fraudulent claims paid or approved by the United States in violation of the FCA.

26. Because of these acts, the United States has suffered damages.

COUNT THREE

(False Claims Act, 31. U.S.C. § 3729(a)(3))

(Against All Defendants)

27. Ms. Wells realleges and incorporates by reference all paragraphs set forth herein.

28. By virtue of the acts described above, defendants conspired to defraud the United States by getting a false or fraudulent claim allowed or paid in violation of the FCA.

29. Because of these acts, the United States has suffered damages.

COUNT FOUR

(Common Law Fraud)

(Against All Defendants)

30. Ms. Wells realleges and incorporates by reference all paragraphs set forth herein.

31. The false records or statements made by defendants, as described above, were misrepresented and concealed material facts.

1 D. Ms. Wells respectfully requests leave of the Court to amend the
2 Complaint when the amount of damages has been fully ascertained or to amend
3 the Complaint to conform to proof at or prior to trial;

4 E. For costs, fees and other relief as may be just and proper;

5 F. For a ten percent (10%) surcharge in the amount of the debt owed
6 pursuant to 28 U.S.C. § 3011.

7 **DEMAND FOR A JURY TRIAL**

8 Pursuant to Rule 38 of Federal Rules of Civil Procedure and pursuant to the
9 local rules of Court, Ms. Wells demands a jury trial as to all issues so triable.

10
11 Dated: July 12 2007

Respectfully submitted by:

12 KREINDLER & KREINDLER LLP

13
14 
MARK I. LABATON

15 LAW OFFICES OF GEORGE A. SHOHET

16 
17 GEORGE SHOHET